

NTSB Order No. EA-4030

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 22nd day of November, 1993

Docket SE-12203

respondent had violated 14 C.F.R. 43.9(a) and 43.11(a)(2). However, she dismissed as inapplicable the alleged violations of 14 C.F.R. 43.13(a) and (b), notwithstanding her finding that the underlying factual allegations had been established.²

On appeal, the Administrator urges us to reinstate the violations of section 43.13(a) and (b), while respondent argues that the evidence does not support the law judge's findings that he violated sections 43.9(a) and 43.11(a)(2). Both parties have filed reply briefs opposing the other's appeal. For the reasons that follow, both appeals are granted in part and denied in part. The 45-day suspension of respondent's IA is affirmed.

It is undisputed that respondent, who holds a mechanic certificate with Airframe and Powerplant ratings and an IA, performed and recorded maintenance on a Piper PA23-160 on several occasions from March, 1990, through October, 1990. The complaint in this case separated the alleged violations, all of which pertained to respondent's maintenance of that aircraft, into two categories: 1) allegedly deficient maintenance entries; and 2) alleged noncompliance with Airworthiness Directive (AD) 90-04-06.

Because we have been unable to clearly correlate the law judge's findings in this case with the specific allegations in the complaint, or with the Administrator's evidence³ (which also deviated in many respects from the allegations in the complaint),

² The relevant regulations are set forth, in pertinent part, in an Appendix to this opinion and order.

³ The respondent offered two exhibits into evidence, but presented no testimony in this case.

we have independently evaluated the evidence as it relates to the allegations in the complaint.

1. Maintenance entries. It was alleged in the complaint that, on two occasions (a 100 hour aircraft inspection on March 5, 1990; and a 100 hour right propeller inspection on June 12, 1990) respondent failed to make an entry in the aircraft records providing a description of the work performed. It was also alleged that, in connection with respondent's annual inspection of the right engine, on June 12, 1990, he failed to make an entry in the aircraft records describing the location of two replaced cylinders. Further, it was alleged that on six occasions (an annual right engine inspection on June 12, 1990; 100 hour right engine inspections on August 10 and 28, 1990; and 100 hour right propeller inspections on June 12, 1990, August 10, 1990, and October 28, 1990) respondent failed to make an entry in the aircraft records of the total time in service at the time of maintenance. And, finally, it was alleged that when respondent replaced the emergency locator transmitter (ELT) on March 19, 1990, he failed to make an entry in the aircraft records of the date that maintenance was performed.

In connection with the above-described factual allegations, the Administrator alleged that respondent violated 14 C.F.R. 43.9(a)(2) (requiring maintenance entries to include the date of completion of the work performed), and 43.11(a) subsection (1) (requiring maintenance entries for certain inspections to include the type of inspection and a brief description of the extent of

the inspection) and subsection (2) (requiring those entries to include the date of the inspection and aircraft total time).

Our evaluation of the record reveals that only two of the Administrator's numerous allegations of improper maintenance entries were substantiated by the evidence. Specifically, we find that respondent's March 5, 1990 entry certifying the aircraft as airworthy after a 100 hour aircraft inspection violated section 43.11(a)(1) in that it did not adequately describe the extent of the inspection. We base this finding not on the lack of a detailed description of what is encompassed in a 100 hour inspection (as that is easily ascertainable from the checklist contained in Appendix D to Part 43),⁴ but on the insufficiency of respondent's additional notation "all ADs c/w [complied with] thru this date." (See Exhibit A-6, p. 3.) As noted by the inspector who investigated this case, and as found by the law judge, such a notation is meaningless without some reference to which ADs were applicable to the aircraft, and the method of compliance. (Tr. 35, 163.) Not even the work orders pertaining to the March 5, 1990 maintenance -- which respondent unsuccessfully argued should be considered part of the permanent aircraft records in this case⁵ -- refer to any specific ADs.

⁴ The FAA inspector who investigated these alleged violations acknowledged that the reference in respondent's entry in the aircraft logbook to a "100 hour inspection" indicated that the inspection conformed to the checklist in Appendix D of Part 43, but suggested nonetheless that it was an insufficient description.

⁵ Although not directly relevant to our disposition of these appeals, we note our agreement, on other grounds, with the law

The second maintenance entry violation established by the Administrator's evidence relates to respondent's March 19, 1990 entry regarding replacement of the ELT. (Exhibit A-7, p. 3.) That entry contains no date, a clear violation of section 43.9(a)(2).

The remaining maintenance entry violations alleged in the complaint were not supported by the evidence.⁶ Additional

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judge's conclusion that the work orders should not be considered part of the aircraft maintenance records. While the law judge based her conclusion on the fact that the work orders were not kept along with the aircraft's logbooks and other maintenance records (a circumstance more likely controlled by the aircraft owner than by maintenance personnel), we are more influenced by the fact (as noted in the Administrator's reply brief) that the work orders were not referenced in any logbook entries or in other maintenance records, as required by FAA Advisory Circular 43-9B, paragraph 6.e. (Exhibit A-16.)

⁶ For example, many of respondent's entries in the engine logbook and propeller logbook lacked the aircraft total time in service, as required by section 43.11(a)(2). But that prima facie evidence of violations was rebutted when the FAA inspector agreed, on cross-examination, that the total time in service for the relevant dates did appear in the aircraft logbook, thus bringing the aircraft maintenance records into compliance on this point. (Tr. 88-90, 93-4, 101-4.) Although the inspector implied that he did not see those total times in the aircraft log when he first inspected them and identified the alleged violations here at issue, the Administrator did not attempt to overcome the respondent's rebuttal evidence by, for example, showing that the total times listed in the aircraft log were incorrect, or offering other evidence (testimony, or even the logbook itself) that the times were not part of the original entries, which would have required the law judge to make a credibility resolution on this point.

In addition, it was alleged that the entry associated with respondent's certification of an annual right engine inspection on June 12, 1990 (Exhibit A-8, p. 2), contained an insufficient description of the inspection, as required by section 43.11(a)(1), in that it indicated that two (of the engine's four) cylinders had been replaced, but did not indicate which two. While this might well constitute a violation of section 43.9(a)(1) (requiring maintenance entries to contain an adequate description of work performed), in our judgment it is beyond the

potential violations were suggested by the Administrator's evidence, but were not alleged in the complaint.⁷ Because the complaint is the vehicle by which respondent is given fair notice of the charges he will be expected to defend against and which facts and circumstances underlie those alleged violations, we cannot give any weight to apparent violations which were not alleged in the Administrator's complaint.⁸

2. AD noncompliance. It is undisputed that AD 90-04-06 was applicable to the Piper aircraft maintained by respondent, and that the AD required the replacement of certain aluminum attachment nuts and fittings with steel parts at the next engine

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scope of section 43.11(a)(1) which requires only a description of the extent of an inspection. It should be emphasized that in this proceeding the Administrator seeks only to suspend respondent's privileges as an IA, not as a mechanic.

Finally, the Administrator alleged that respondent's certification of a 100 hour right propeller inspection on June 12, 1990 (Exhibit A-9, p. 3), was also insufficient under section 43.11(a)(1) in that it did not properly describe the extent of the inspection. However, no explanation was offered as to why respondent's description ("100 hour inspection") was inadequate.

We note again that the parameters of a 100 hour inspection are specified in Appendix D to Part 43.

⁷ For example, the Administrator's evidence revealed three entries containing the notation "all ADs complied with," which, as discussed above, we agree is insufficient. However, the factual allegations in the complaint embraced only one of those entries. The Administrator's evidence also revealed that several maintenance entries signed by respondent were generally sloppy and potentially inadequate under section 43.9(a)(1), a regulatory violation not included in the Administrator's complaint. (See discussion in footnote 6, above.)

⁸ See Administrator v. MacGlashan, 5 NTSB 1539, 1541 (1986) (the complaint establishes the parameters of the Administrator's case); Administrator v. Robinson, 5 NTSB 1690, 1692 (1987) (Board cannot redraft the complaint but must evaluate the evidence in light of the allegations).

overhaul or any time the governor oil line was removed, whichever occurred first. (Exhibit A-4.) The evidence established that new governor oil lines were installed on or about March 5, 1990 (Exhibits R-1 and A-15), and that respondent signed (but did not date) an AD compliance record, to indicate that the subject AD had been complied with "by new oil lines" (Exhibit A-5). It is undisputed that the aluminum nuts and fittings were not replaced with steel as required by the AD (Exhibit A-2; Tr. 14.).

As a result, the Administrator alleged that respondent had violated 14 C.F.R. 43.9(a)(2) (requiring maintenance entries to include the date of completion of the work performed), 43.13(a) (requiring maintenance to be performed using methods, techniques, and practices acceptable to the Administrator), and 43.13(b) (requiring maintenance to be performed so that the condition of the aircraft will be at least equal to its original or properly altered condition).

It is apparent from our review of the evidence and relevant caselaw that the law judge erred in dismissing the alleged violation of section 43.13(a). She found, and the evidence clearly establishes, that respondent certified that the AD requiring replacement of aluminum nuts and fittings with steel parts had been complied with when, in fact, it had not. (Tr. 164-5, Exhibits A-2, A-5.) Her dismissal of the section 43.13 charge was apparently based on her view that that section (setting forth performance rules for maintenance) does not apply

to inspections.⁹ However, that view is contrary to the regulations and to our caselaw, which clearly recognize that inspections are a form of maintenance which are subject to the performance rules in section 43.13.¹⁰

Respondent's failure to insure that the AD had been complied with was a clear violation of section 43.13(a), which requires persons performing maintenance to use the methods, techniques, and practices acceptable to the Administrator.¹¹ However, because the Administrator did not establish that the aircraft -- still bearing its presumably original aluminum parts -- was not in a condition at least equal to its original condition, we decline to reverse the law judge's dismissal of the section 43.13(b) charge.

Although the law judge made no explicit findings as to section 43.9(a)(2) (requiring maintenance entries to contain the date the work was completed) with regard to respondent's undated entry that AD 90-04-06 had been complied with by installation of new oil lines, that charge was clearly established by the evidence. (Exhibit A-5.)

In sum, the preponderance of the evidence establishes that

⁹ The law judge opined that section 43.15 (setting forth additional performance rules for inspections) would have been a more appropriate charge in this case. (Tr. 160.)

¹⁰ 14 C.F.R. 1.1 defines "maintenance" to include "inspection." See also, Administrator v. Woods, 5 NTSB 1819, 1821 (1987); Administrator v. Fisher, 4 NTSB 1382 (1984); and Administrator v. Alphin, 3 NTSB 3600 (1981).

¹¹ There was un rebutted testimony that AD's contain methods, techniques, and practices which are required by, and acceptable to, the Administrator. (Tr. 27-8.)

respondent violated 14 C.F.R. 43.9(a)(2), 43.11(a)(1), and 43.13(a). We agree with the law judge that the noncompliance with the AD is the most serious violation¹² in this case, and that respondent's violations are serious enough to warrant the 45-day suspension of his IA privileges sought in the Administrator's complaint, a sanction which is not inconsistent with precedent.¹³

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's and respondent's appeals are both granted in part and denied in part, as set forth in this opinion and order;
2. The initial decision is modified as described in this opinion and order; and
3. The 45-day suspension of respondent's inspection authorization shall commence 30 days after the service of this opinion and order.¹⁴

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HAMMERSCHMIDT, and HALL, Members of the Board, concurred in the above opinion and order.

¹² We recognize, of course, that the law judge's reference to the AD noncompliance as a "violation" cannot be squared with her dismissal of the section 43.13 charges. However, our reinstatement of the 43.13(a) violation moots this inconsistency in the initial decision.

¹³ In Administrator v. Alphin, 3 NTSB 3600 (1981) we affirmed a 45-day suspension of an IA's privileges based on his inspection and return to service of two aircraft engines which had been improperly overhauled.

¹⁴ For the purpose of this opinion and order, respondent must physically surrender his inspection authorization to an appropriate representative of the FAA pursuant to FAR § 61.19(f).

APPENDIX

§ 43.9 Content, form, and disposition of maintenance, preventive maintenance, rebuilding, and alteration records (except inspections performed in accordance with Part 91, Part 123, Part 125, § 135.411(a)(1), and § 135.419 of this chapter).

(a) *Maintenance record entries.* Except as provided in paragraphs (b) and (c) of this section, each person who maintains, performs preventive maintenance, rebuilds, or alters an aircraft, airframe, aircraft engine, propeller, appliance, or component part shall make an entry in the maintenance record of that equipment containing the following information:

(1) A description (or reference to data acceptable to the Administrator) of work performed.

(2) The date of completion of the work performed.

* * *

§ 43.11 Content, form, and disposition of records for inspections conducted under Parts 91 and 125 and §§ 135.411(a)(1) and 135.419 of this chapter.

(a) *Maintenance record entries.* The person approving or disapproving for return to service an aircraft, airframe, aircraft engine, propeller; appliance, or component part after any inspection performed in accordance with Part 91, 123, 125, § 135.411(a)(1), or § 135.419 shall make an entry in the maintenance record of that equipment containing the following information:

(1) The type of inspection and a brief description of the extent of the inspection.

(2) The date of the inspection and aircraft total time in service.

* * *

§ 43.13 Performance rules (general).

(a) Each person performing maintenance, alteration, or preventive maintenance on an aircraft, engine, propeller, or appliance shall use the methods, techniques, and practices prescribed in the current manufacturer's maintenance manual or Instructions for Continued Airworthiness prepared by its manufacturer, or other methods, techniques, and practices acceptable to the Administrator, except as noted in § 43.16. He shall use the tools, equipment, and test apparatus necessary to assure completion of the work in accordance with accepted industry practices. If special equipment or test apparatus is recommended by the manufacturer involved, he must use that equipment or apparatus or its equivalent acceptable to the Administrator.

(b) Each person maintaining or altering, or performing preventive maintenance, shall do that work in such a manner and use materials of such a quality, that the condition of the aircraft, airframe, aircraft engine, propeller, or appliance worked on will be at least equal to its original or properly altered condition (with regard to aerodynamic function, structural strength, resistance to vibration and deterioration, and other qualities affecting airworthiness).